SSS Typographers, Inc. d/b/a Ace Typographers, and AVJ Graphics, Inc. d/b/a Manhattan Graphic Productions *and* Reuben D. Lawrence III. Case 2-CA-17400

March 26, 1981

DECISION AND ORDER

Upon a charge filed on July 18, 1980, by Reuben D. Lawrence III, an individual, herein called the Charging Party, and duly served on SSS Typographers, Inc. d/b/a Ace Typographers, and AVJ Graphics, Inc. d/b/a Manhattan Graphic Productions, herein called Respondents, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 2, issued a complaint on July 31, 1980, against Respondents, alleging that Respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3), and (4) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.[1]

With respect to the unfair labor practices, the complaint alleges in substance that on or about July 11, 1980, Respondents discharged employee Reuben D. Lawrence III, and thereafter failed and refused, and continue to fail and refuse, to reinstate him because he joined, supported, or assisted New York Typographical Union No. 6, International Typographical Union, AFL-CIO; because, on May 14, 1980, he filed an unfair labor practice charge against Respondents in Case 2-CA-17244 and gave testimony to the Board in the form of an affidavit; and because, on or about May 30, 1980, he filed a charge against Respondents with the Occupational Safety and Health Administration.

On December 1, 1980, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment based on Respondents' alleged failure to file an answer to the complaint in the instant proceeding. Subsequently, on December 9, 1980, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondents thereafter filed a response to the Notice To Show Cause on December 29, 1980. On January 16, 1981, the General Counsel filed a response to Respondents' response to the Notice To Show Cause. Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, provides as follows:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondents herein specifically states that unless an answer to the complaint is filed within 10 days of service thereof all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board. In her Motion for Summary Judgment, counsel for the General Counsel alleges that Respondent has never filed an answer to said complaint, has never requested any extension of time to file said answer, and has not provided any explanation for having not filed an answer.

In their response to the Notice To Show Cause, Respondents alleged that they, in fact, filed an answer to the complaint on September 3, 1980, with Region 2 of the National Labor Relations Board and they indicated that they had attached a copy of that answer to their response. No such answer was appended to the copies of the response received by the Board in Washington, D.C.

In her response to Respondents' response to the Notice To Show Cause, counsel for the General

[1] A hearing in Cases 2-CA-16952, 2-CA-17014, 2-CA-17244, and 2-CA-17259, involving the same Respondents herein, commenced on July 14, 1980, before Administrative Law Judge James F. Morton, and closed on July 16, 1980. Thereafter, on August 7, 1980, the General Counsel filed with the Administrative Law Judge a "Motion To Consolidate Cases and Reopen the Record," requesting that the record in the prior cases be reopened for purposes of taking testimony with regard to Case 2-CA-17400. On September 5, 1980, the Administrative Law Judge issued an "Order Re-Opening Hearing, Consolidating Cases, and Re-Scheduling Hearing," in which he ordered that the hearing in Cases 2-CA-16952, 2-CA-17014, 2-CA-17244, and 2-CA-17259 be reopened, and that said cases be consolidated for further hearing with Case 2-CA-17400.

On October 7, 1980, the General Counsel filed with the Administrative Law Judge a "Motion To Sever Cases and Close the Record" requesting that Case 2-CA-17400 be severed from the cases heard on July 14-16, 1980; that the record in said cases be closed; and that a new date be set for the submission of briefs regarding those cases, since Respondent have not filed an answer to the complaint in Case 2-CA-17400. On October 9, 1980, the Administrative Law Judge issued an "Order Severing Cases, Cancelling Hearing and Setting Date for Filing of Briefs."

Counsel alleges that: (1) depsite Respondents' contention that they had filed an answer to the complaint in this case with Region 2 on September 3, 1980, Region 2 has never received an answer and has never been served with the attachment to Respondents' response to the Board's Notice To Show Cause which was submitted as evidence of proof of service of this answer;[2] (2) the Charging Party was never served with an answer to the complaint, which is required pursuant to Section 102.21 of the Board's Rules an Regulations, Series 8, as amended; (3) assuming, *arguendo*, that said answer was, in fact, filed on September 3, 1980, it was filed in an untimely fashion since the complaint was mailed on July 31, 1980, received by Respondents on August 2, 1980, and, pursuant to Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, an answer was due 10 days from the date of service of the complaint; and (4) further assuming, *arguendo*, that said answer was, in fact, filed on September 3, 1980, counsel for Respondents was put on notice by Adminstrative Law Judge Morton's "Order Severing Cases, Cancelling Hearing and Setting Date for Filing of Briefs," which issued on October 9, 1980, that Region 2 had never received an answer to the complaint in this proceeding, thus, that refiling of its answer was necessary, yet Respondents never attempted to refile the answer. Respondents have not replied to the assertions in the General Counsel's response.

We agree with the General Counsel's contention that the record does not establish that Respondents ever filed an answer to the complaint as the Board in Washington has never received Respondents' answer allegedly attached to its response to the Notice To Show Cause and the averments of General Counsel and the Charging Party indicate they have never been served with an answer either.

Nevertheless, even if such an answer exists and was filed on September 3, 1980, we find that it was filed in an untimely fashion. The Regional Director issued and mailed the complaint on July 31, 1980. As the proof of service submitted by counsel for the General Counsel indicates, Respondents received the complaint on August 2, 1980. Pursuant to Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, an answer to the complaint was due 10 days from the date of service of the complaint upon Respondents. It was not filed in that time period and no extension of time for filing was sought. Thus, even assuming that Respondents' answer was filed on September 3, 1980, it was untimely filed.[3]

Given these circumstances, and in accordance with the rules set forth above, the allegations of the complaint are deemed to be admitted to be true and are so found by the Board. Accordingly, we hereby grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENTS

At all times material herein, AVJ Graphics, Inc. d/b/a Manhattan Graphic Productions (AVJ), a New York corporation with an office and place of business in New York, New York, has been engaged in providing typographical, photo typesetting, and related services to commercial customers.

At all times material herein, SSS Typographers, Inc. d/b/a Ace Typographers (Ace), a New York corporation with an office and place of business in New York, New York, has been engaged in providing typographical, photo typesetting, and related services to commercial customers.

At all times material herein, Respondent AVJ and Respondent Ace have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy affecting employees of said operations; have shared common premises and facilities; have interchanged personnel with each other; and have held themselves out to the public as a single integrated business enterprise.

By virtue of their operations described above, Respondent AVJ and Respondent Ace constitute a single integrated business enterprise and a single employer.

Annually, Respondent AVJ and Respondent Ace in the course and conduct of their operations described above, collectively, perform services valued in excess of $50,000 for various enterprises located in States other than the State of New York.

We find, on the basis of the foregoing, that Respondents are, and have been at all times material herein, employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

[2] Counsel for the General Counsel further alleges that, on December 9, 1980, she telephoned the office of Respondents' counsel and requested that said attachment be served on Region 2. As of January 9, 1981, this attachment had not been received by Region 2.

[3] See *Livingston Powdered Metal, Inc.*, 253 NLRB No. 73 (1980); *Neal B. Scott Commodities, Inc.*, 238 NLRB 32 (1978).

II. THE LABOR ORGANIZATION INVOLVED

New York Typographical Union No. 6, International Typographical Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. UNFAIR LABOR PRACTICES

On May 14, 1980, the Charging Party, Reuben D. Lawrence III, an individual in Respondents' employ, filed an unfair labor practice charge under the National Labor Relations Act, as amended, against Respondents in Case 2-CA-17244. On or about May 30, 1980, the Charging Party filed a charge against Respondents with the Occupational Safety and Health Administration. On or about July 11, 1980, Respondents discharged the Charging Party. Since on or about July 11, 1980, Respondents have failed and refused to reinstate the Charging Party to his former position of employment because he joined, supported, and assisted in activities on behalf of the Union, because he filed an unfair labor practice charge against Respondents and gave testimony in the form of an affidavit, and because he filed a charge against Respondents with the Occupational Safety and Health Administration.

By the aforesaid conduct Respondents have interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed them in Section 7 of the Act, and have discriminated, and are discriminating, in regard to the hire or tenure or terms or conditions of employment of their employees, thereby discouraging membership in a labor organization, and have discriminated, and are discriminating, against employees for filing charges or giving testimony under the Act. Accordingly, we find that Respondents did thereby engage in, and are engagaing in, unfair labor practices within the meaning of Section 8(a)(1), (3), and (4) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondents set forth in section III, above, occurring in connection with their operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(1), (3), and (4) of the Act, we shall order that Respondents cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondents unlawfully discharged Reuben D. Lawrence III, we shall order that Respondents offer Reuben D. Lawrence III immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings he may have suffered as a result of Respondents' discrimination against him in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[4]

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. SSS Typographers, Inc. d/b/a Ace Typographers, and AVJ Graphics, Inc. d/b/a Manhattan Graphic Productions, are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. New York Typographical Union No. 6, International Typographical Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By unlawfully discharging Reuben D. Lawrence III on or about July 11, 1980, Respondents have interfered with, restrained, coerced, and discriminated against employees in the exercise of the rights guaranteed them in Section 7 of the Act, and have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(1), (3), and (4) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, SSS Typographers, Inc. d/b/a Ace Typographers and AVJ Graphics, Inc. d/b/a Manhattan Graphic Productions, New York, New York, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging its employees for engaging in union activities or in concerted activities for their

[4] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). Member Jenkins notes that he would award interest on any backpay owed Reuben D. Lawrence III on the basis of his position set out in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

mutual aid or protection, or otherwise discriminating in regard to hire or tenure of employment or any term and condition of their employment.

(b) Discharging its employees for filing unfair labor practice charges or giving testimony to the Board.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer Reuben D. Lawrence III immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings he may have suffered due to the discrimination practiced against him by paying him a sum equal to what he would have earned, less any net interim earnings, plus interest, in the manner set forth in the section of this Decision and Order entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at their facility in New York, New York, copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 2, after being duly signed by Respondents' representative, shall be posted by Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps Respondents have taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT discharge any employee for engaging in union activities or in concerted activities for the mutual aid or protection of employees, or otherwise discriminate in regard to hire or tenure of employment or any term and condition of employment.

WE WILL NOT discharge any employee for filing an unfair labor practice charge or giving testimony before the Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer Reuben D. Lawrence III immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or prvileges previously enjoyed, and make him whole for any loss of earnings he may have suffered due to the discrimination practiced against him by paying him a sum equal to what he would have earned, less any net interim earnings, plus interest.

SSS TYPOGRAPHERS, INC. D/B/A ACE TYPOGRAPHERS, AND AVJ GRAPHICS, INC. D/B/A MANHATTAN GRAPHIC PRODUCTIONS

[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."